

**EXHIBITS ATTACHED TO DECLARATION OF
JILL R. SHELL**

Exhibit A	Judgment, Jul. 15, 2010
Exhibit B	Transcript of Proceedings, Oct. 16, 2006 (excerpt)
Exhibit C	BOP Locator release date estimate
Exhibit D	U.S. Supreme Court Docket, <i>Lynne Stewart v. United States</i> , Case No. 12-8891
Exhibit E	Michael L. Grossbard, M.D., letters, Feb. 28, 2006 and Jun. 28, 2006
Exhibit F	Summary of Medical Records
Exhibit G	Selected Radiology Reports; Pathology Reports; Reports by the Center for Cancer and Blood Disorders; and Health Services – Clinical Encounter – Administrative Notes
Exhibit H	Michael L. Grossbard, M.D., letter Jul. 26, 2013
Exhibit I	Michael L. Grossbard, <i>curriculum vitae</i>
Exhibit J	Richard Dundy, M.D., letter Jul. 26, 2013
Exhibit K	Richard Dundy, M.D., <i>curriculum vitae</i>
Exhibit L	Lynne Stewart Application to Warden, FMC Carswell for Compassionate Release, Apr. 12, 2013
Exhibit M	BOP Memorandum from Kathleen M. Kenney, Assistant Director/General Counsel to Jody R. Upton, Warden, Federal Medical Center, Carswell, denying compassionate release application, Jun. 24, 2013
Exhibit N	Lynne Stewart letter to the Honorable John G. Koeltl, July 2013

EXHIBIT A

UNITED STATES DISTRICT COURT

SOUTHERN

District of

NEW YORK

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

LYNNE STEWART

Case Number: S1 1:02CR00395-003 (JGK)

USM Number: 53504-054

JILL R. SHELLOW

Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.X was found guilty on count(s) ONE, FOUR, FIVE, SIX AND SEVEN OF THE SUPERCEDING INDICTMENT
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC 371	CONSPIRACY TO DEFRAUD THE UNITED STATES	4/30/2002	1
18 USC 371	CONSPIRACY TO PROVIDE MATERIAL SUPPORT TO TERRORIST ACTIVITY	4/30/2002	4
18 USC 2339A	PROVIDE AND CONCEAL MATERIAL SUPPORT TO TERRORIST ACTIVITY	4/30/2002	5
18 USC 1001	FALSE STATEMENTS	5/31/2000	6
18 USC 1001	FALSE STATEMENTS	5/31/2001	7

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____X Count(s) ALL OPEN COUNTS ☐ is X are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

JULY 15, 2010

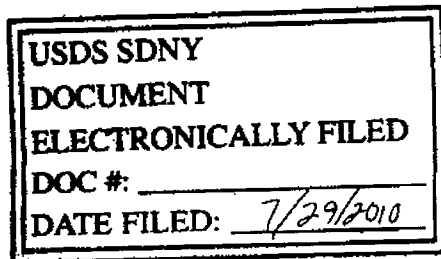
Date of Imposition of Judgment

Signature of Judge

JOHN G. KOELTL, UNITED STATES DISTRICT JUDGE

Name and Title of Judge

Date



DEFENDANT: LYNNE STEWART
CASE NUMBER: S1 1:02CR00395-003 (JGK)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

120 MONTHS, TO BE IMPOSED AS FOLLOWS: 120 MONTHS ON COUNT 5, AND 60 MONTHS ON COUNTS 1, 4, 6 AND 7, ALL TO RUN CONCURRENTLY.

THIS IS A RESENTENCE OF THE DEFENDANT, WHO WAS ORIGINALLY SENTENCED ON OCTOBER 16, 2006.

☒ The court makes the following recommendations to the Bureau of Prisons:

1) That the defendant be incarcerated at FCI Danbury, CT, so that she can be close to her family. 2) That the defendant be designated Care Level 2 by the Bureau of Prisons and, to the extent possible, her care continue to be monitored by Dr. Glover. 3) That the defendant continue to be held at the Metropolitan Correctional Center, NY, for 60 days to allow her to participate in the preparation of any appeals, and that she continue to be held there during the briefing of any appeal if any appeal is taken.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: LYNNE STEWART
CASE NUMBER: SI 1:02CR00395-003 (JGK)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

2 YEARS TO RUN CONCURRENTLY ON COUNTS ONE, FOUR, FIVE, SIX AND SEVEN.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: LYNNE STEWART
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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 500.00	\$	\$

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____ 0	\$ _____ 0
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- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: LYNNE STEWART
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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☐ Lump sum payment of \$ _____ due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
-THE SPECIAL ASSESSMENT SHALL BE DUE IMMEDIATELY.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

EXHIBIT B

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sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,

5 v.

S1 02 Cr. 395 (JGK)

6 AHMED ABDEL SATTAR, a/k/a "Abu Omar,"
7 a/k/a "Dr. Ahmed," LYNNE STEWART,
8 and MOHAMMED YOUSRY,

9 Defendants.

10 -----x
11
12 October 16, 2006
13 10:30 a.m.

14 Before:

HON. JOHN G. KOELTL

District Judge

15 APPEARANCES

16 MICHAEL J. GARCIA
17 United States Attorney for the
18 Southern District of New York
19 ROBIN BAKER
20 ANDREW DEMBER
21 IRIS LAN
22 Assistant United States Attorneys

23 KENNETH A. PAUL
24 BARRY M. FALICK
25 Attorneys for Defendant Sattar

JOSHUA L. DRATEL
ELIZABETH M. FINK
SUSAN JORDAN
JILL R. SHELLLOW-LAVINE
ELLEN YAROSHEFSKY
Attorneys for Defendant Stewart

DAVID A. RUHNKE
DAVID STERN
Attorneys for Defendant Yousry

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1 May we have until Monday to submit that to the court?

2 THE COURT: Yes. It should be given to the government
3 also to see if there is any problem with it.

4 MR. DRATEL: Yes, your Honor, thank you.

5 THE COURT: All right.

6 I adopt the findings of fact in the Pre-Sentence
7 Report except as I have already noted and except as I will
8 explain below.

9 I turn now to the arguments of the parties in
10 connection with the calculation of the advisory sentencing
11 guidelines range in this case together with any suggested
12 departures. I will then turn to the analysis under 18 U.S.C.
13 Section 3553(a).

14 Defendant Stewart objects to the application of the
15 terrorism enhancement in Section 3A1.4 on the grounds that her
16 conduct does not fall within the heartland of the enhancement
17 and therefore should not be applied. I have already explained
18 the structure of the enhancement in connection with Mr.
19 Sattar's sentence and I adopt that discussion here. I also
20 adopt my explanation of why the enhancement should be applied
21 to both groups of offenses as described in the Pre-Sentence
22 Report, an issue that none of the parties had contested.

23 With respect to Ms. Stewart, the enhancement applies
24 because the offense of which she was convicted in Count 5,
25 providing and concealing material support to terrorist activity

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1 in violation of Section 2339(A), involved a federal crime of
2 terrorism, namely, Section 2339(A), which is a specifically
3 enumerated crime in 2332(b)(g)(5), and the crime of which she
4 was convicted in Count 4, conspiracy to violate Section
5 2339(A), was intended to promote a federal crime of terrorism,
6 namely, Section 2339(A) and Section 956, both of which are
7 specifically enumerated crimes in 2332(b)(g)(5). The defendant
8 does not specifically challenge the literal application of the
9 guidelines, but her papers could be read as an argument that
10 her actions were not calculated to influence or affect the
11 conduct of government by intimidation or coercion, or to
12 retaliate against government conduct as required by
13 2332(b)(g)(5)(A). She argues that her actions were all part of
14 the zealous representation of her client Sheikh Omar Abdel
15 Rahman. But some of her papers could in fact be read as a
16 concession that her actions were calculated to influence or
17 affect the conduct of government. The thrust of part of her
18 argument is that her actions were calculated to influence or
19 affect the conduct of the governments of the United States and
20 Egypt such that Sheikh Omar Abdel Rahman would be returned to
21 Egypt even if still in custody. Hence, in her affirmation
22 submitted with her reply papers, Ms. Stewart affirms that "My
23 actions were intended only to foster the possibility that my
24 client might one day be able to return to Egypt, even as a
25 prisoner of the current regime or one akin to it." Letter of

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1 Lynne Stewart dated September 26, 2002 at page 5. However,
2 there was in fact ample evidence to show that the defendant's
3 actions were calculated to affect the conduct of the Egyptian
4 government through intimidation and coercion. Indeed, the jury
5 found that the defendant possessed the specific intent to
6 provide Abdel Rahman as a co-conspirator in a conspiracy to
7 kill. The court has summarized some of the evidence in the
8 decision denying the defendant's motion for a judgment of
9 acquittal, originally made at the conclusion of the
10 government's case, and it's unnecessary to repeat it here. The
11 evidence at trial supports the conclusion that the defendant
12 violated the SAMs, smuggled terrorism messages to and from
13 Sheikh Abdel Rahman, and twice issued his withdrawal of support
14 for a cease fire which had otherwise called a halt to violence
15 by the Islamic Group against the Egyptian government in order,
16 at the very least, to have him transferred to Egypt or
17 released. See Sattar, 395 F.Supp. 2d at 93 to 99; see also
18 Government Exhibit 9, 524, 554XT, 1706X at 27 to 32; 1707X at
19 27 to 36. The defendant conduct cannot be found to be outside
20 the heartland of the enhancement, but the court will take all
21 of the defendant's arguments into account in performing the
22 analysis under Section 3553(a).

23 The defendant also argues that the criminal history
24 category 6 required by the terrorism enhancement overstates the
25 seriousness of the defendant's past conduct or the likelihood

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1 that the defendant will commit further crimes. There is merit
2 to this argument and it is a basis for a downward departure
3 which the Court of Appeals recognized in United States against
4 Meskini, 319 F.3d 88, 92 (2d Cir. 2003). This is one of the
5 rare cases where it makes sense to consider the extent of the
6 departure in the context of the Section 3553(a) factors rather
7 than making an individual determination of the amount of the
8 departure appropriate solely for the overly enhanced criminal
9 history category for the terrorism enhancement. See the United
10 States v. Crosby, 397 F.3d 103, 112 (2d Cir. 2005).

11 The defendant submission could be read as not arguing
12 specific departures from the guidelines, but relying on
13 language in Crosby simply asking the court to apply a
14 non-guideline sentence. See defendant's memo at 12. However,
15 the court will consider the guidelines and any requests for
16 departures for enhancements before turning to the Section
17 3553(a) factors.

18 The defendant argues that her conduct comes within
19 Section 5K2.11 and warrants a departure. The court recognizes
20 it's ability to depart under that section but the defendant's
21 conduct does not fall within the scope of that departure. With
22 respect to the first paragraph of that policy statement, the
23 departure does not apply because the circumstances of this case
24 do not diminish society's interest in punishing the conduct at
25 issue. (Continued on next page)

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1 THE COURT: This is not a case where the interest in
2 punishment or deterrence is reduced. With respect to the
3 second paragraph, it cannot be said that the defendant's
4 conduct did not cause or threaten the harm sought to be
5 prevented by the statutes that the defendant violated.

6 The defendant points to her medical condition, in
7 particular the fact that she was treated for breast cancer,
8 underwent an operation and radiation therapy and is continuing
9 to take medication for her condition.

10 The Court is aware of its ability to depart based on
11 extraordinary medical conditions under Section 5H1.4. This is
12 a condition that the Court will take into account in making the
13 determination under Section 3553(a), and the Court therefore
14 does not have to reach the question of whether the defendant's
15 medical condition, given her age and continuing treatment, is
16 sufficient in itself to warrant a departure from the
17 guidelines.

18 The defendant also contends that her conduct was
19 aberrational and the Court is aware of its ability to
20 downwardly depart on this basis under Section 5K2.20 of the
21 guidelines. The Court chooses not to exercise its discretion
22 under this departure because the defendant's conduct was
23 committed over an extended period of time, involved repeated
24 acts of deception, and involves significant planning.

25 The government argues that there should be an

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sentencing

1 enhancement of two levels under Section 3C1.1 for obstruction
2 of justice based on the defendant's alleged trial perjury. The
3 Court has already reviewed the standards for this enhancement
4 in connection with Mr. Sattar's sentence and incorporates that
5 discussion here.

6 The government asserts that there are two grounds for
7 the enhancement. First, the government contends that
8 Ms. Stewart knowingly gave false testimony when she testified
9 that she understood that there was a bubble built into the SAMS
10 whereby the attorneys could issue press releases containing
11 Abdel Rahman's statements as part of their representation of
12 him. Transcript 7717, 7832, 7880 to 81.

13 The government also contends that Ms. Stewart
14 testified falsely when she denied knowing who Taha was until
15 learning about him in the course of the trial except for an
16 article that she came across in her representation of Yasir
17 Ahmed. Transcript, 7650, 7738, 7791.

18 There is evidence to indicate that these statements
19 were false statements but it is unnecessary to reach whether
20 the defendant knowingly gave false testimony with the intent to
21 obstruct the proceedings. First, the guidelines calculation
22 already provided for the statutory maximum permitted by the
23 statutes of conviction. Second, consistent with the Court of
24 Appeals' decision in Crosby, this Court has determined that a
25 nonguideline sentence is reasonable and most consistent with

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1 the factors set forth in Section 3553(a).

2 Therefore, the total offense level is 41, the Criminal
3 History Category is VI, and the guideline sentencing range
4 using the November 2000 guidelines is 360 months, the statutory
5 maximum.

6 The government seeks the statutory maximum. That is
7 the guideline sentencing range. Although the government did
8 not make it clear at the sentencing hearing today, the
9 government's position is that the defendant should be sentenced
10 to a term of life.

11 The defendant seeks a non-guideline sentence that
12 imposes no incarceration.

13 There is no presumption, rebuttable or otherwise, that
14 a guideline sentence is reasonable. See, United States v.
15 Fernandez, 443, F.3d 19, 27, (2d Cir. 2006). While treating
16 the guidelines as a benchmark or point of reference, there are
17 no per se rules with respect to the reasonableness of a
18 sentence. United States v. Rattabolli, 452 F.3d 127, 133, (2d
19 Cir. 2006). The Court must articulate factors that are
20 personal to a particular defendant. Id.; see also United
21 States v. Jones, 460 F.3d 191, (2d Cir. 2006). The Court must
22 consult all of the factors in 18 U.S.C. Section 3553(a) and
23 impose a sentence that is sufficient but no greater than
24 necessary to comply with the purposes of Section 3553(a)(2).
25 The Court adopts the discussion of those statutory purposes as

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1 it explained them in connection with Mr. Sattar.

2 In this case there are numerous factors that argue in
3 favor of a very substantial downward variance. Initially, this
4 is an atypical case for the terrorism enhancement.

5 The government's summary of other cases involving
6 violations of 18 U.S.C. Section 2339A, or conspiracy to violate
7 Section 2339A, indicates that there are few, if any cases,
8 where the thrust of the violation was the provision of a
9 co-conspirator to a terrorist conspiracy.

10 Moreover, as pointed out with respect to Mr. Sattar,
11 there is no evidence that any victim was in fact harmed as a
12 result of the offense as charged, a factor that the guidelines
13 would otherwise take into account.

14 The increase in the Criminal History Category from I
15 to VI as a result of the terrorism enhancement is also
16 dramatically unreasonable in the case of Ms. Stewart. The
17 Court incorporates the legal analysis already discussed with
18 respect to Mr. Sattar. With respect to the facts of
19 Ms. Stewart's case, her Criminal History Category VI overstates
20 the seriousness of the defendant's past conduct and the
21 likelihood that the defendant will repeat the offense.

22 With respect to the defendant's past conduct, the
23 defendant has no criminal history and yet is placed in the
24 highest criminal history category equal to that of repeat
25 felony offenders for the most serious offenses including murder

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sentencing

1 and drug trafficking.

2 The Court of Appeals has recognized in Meskini that
3 the high Criminal History Category can be appropriate because
4 of the likelihood of recidivism, the difficulty of
5 rehabilitation and the need for incapacitation. Meskini, 319
6 F.3d at 92. That is not this case. The defendant will lose
7 her license to practice law. She will be forever separated
8 from any contact with Sheikh Omar Abdel Rahman and the occasion
9 for the crimes to which she has been convicted will be nil.

10 Without the terrorism enhancement, the guideline
11 sentencing range, without an enhancement for obstruction, would
12 be 28, based on the Group 2 offenses, and, with a Criminal
13 History Category of I, the guideline sentencing range would be
14 78 to 97 months. Group 1 would not be counted because it would
15 be more than eight levels less than Group 2. Even with an
16 obstruction enhancement, the guideline range would be 97 to 121
17 months.

18 The effect of the terrorism enhancement, while correct
19 under the guidelines, would result in an unreasonable result in
20 this atypical case and produce a guideline range about
21 quadruple the range without that enhancement. And the
22 guideline range without the terrorism enhancement is before
23 taking into account the extraordinary personal characteristics
24 of the defendant which also argue strongly in favor of a
25 substantial downward variance.

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1 The personal characteristics of the defendant are
2 intertwined with several of the factors under Section 3553 and
3 the Court of Appeals counseled in Rattabolli that a sentencing
4 Court should focus on characteristics unique or personal to an
5 individual defendant. Rattabolli, 452 F.3d at 153.

6 The Court therefore turns to some of the personal
7 characteristics of the defendant. The defendant is 67 years
8 old. She was a teacher at inner city schools before becoming a
9 lawyer.

10 For over 30 years she has practiced law concentrating
11 on criminal law. In the course of that practice, while she has
12 become well known and celebrated as an excellent lawyer, she
13 did not use the practice of law to earn personal wealth. She
14 has represented the poor, the disadvantaged and the unpopular,
15 often as a Court-appointed attorney.

16 Indeed, she was appointed by the Court to represent
17 Sheikh Omar Abdel Rahman, and thus it was through initially
18 responding to a call for representation of a very unpopular
19 client that she became involved in the crimes of conviction.

20 Having spent her professional career often
21 representing the poor, she is now, at the end of her career,
22 financially destitute.

23 By providing a criminal defense to the poor, the
24 disadvantaged and unpopular over three decades, it is no
25 exaggeration to say that Ms. Stewart performed a public service

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1 not only to her clients but to the nation.

2 Criminal defense lawyers are an essential part of the
3 administration of justice and without them, a fair and just
4 system and the guarantee of the Sixth Amendment could not
5 exist. And as the hundreds of letters that the Court has
6 received attest, Ms. Stewart has performed that role with
7 enormous skill and dedication.

8 This is not a case where a defendant has turned to
9 charity in response to an indictment. Ms. Stewart built a
10 record of accomplishment over more than three decades. Even
11 under the guidelines, while civic, charitable, public service,
12 employment-related contributions and similar prior good works
13 are not ordinarily relevant in determining whether a sentence
14 should be outside the guidelines range, extraordinary
15 contributions may take a defendant outside the guideline range.
16 See, Section 5H1.11 and the policy statements that the
17 Guidelines are not even binding after Booker.

18 A substantial downward variance is warranted based on
19 Ms. Stewart's past work.

20 The fact that she will likely lose the ability to
21 practice law which has motivated and sustained her for more
22 than three decades, is itself a punishment. But,
23 significantly, under Section 3553 it also means that the
24 occasion for her offenses will be removed and that a lengthy
25 sentence of imprisonment would be an excessive one that is

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sentencing

1 sufficient but no greater than necessary to provide for
2 deterrence and protection of the public.

3 Ms. Stewart's other personal characteristics are also
4 relevant to the issue of sentence. She is 67 years old and
5 imprisonment will be particularly difficult on her because of
6 her age. Moreover, she has suffered from cancer and underwent
7 surgery and radiation therapy and is taking medication for the
8 condition now.

9 She has a statistically significant chance of
10 recurrence. She suffers from other medical conditions
11 including sleep apnea. Medical care can be delivered while in
12 prison but it is clear that prison will be particularly
13 difficult for this defendant.

14 While age and physical condition are discouraged
15 factors under the guidelines, see 5H1.1 and 5H1.4, they can be
16 considered in extraordinary cases and are certainly factors to
17 be taken into account after Booker in considering the various
18 factors under Section 3553(a).

19 Any sentence of imprisonment will be particularly
20 difficult for the defendant and will represent a greater
21 portion of her remaining life than for a younger defendant and
22 provide increased punishment for the defendant. Because
23 imprisonment will be particularly hard on the defendant, a
24 lesser sentence than otherwise called for by the advisory
25 guidelines would be sufficient to accomplish the goals of

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sentencing

1 Section 3553(a)(2).

2 But, having assessed the personal characteristics and
3 the strong arguments for substantial downward variance, there
4 is an irreducible core of extraordinarily severe criminal
5 conduct.

6 Ms. Stewart abused her position as a lawyer to gain
7 access to Sheikh Omar Abdel Rahman while he was in prison and
8 used that access to smuggle messages to and from Sheikh Abdel
9 Rahman while he was in prison, and to make potentially lethal
10 public statements on his behalf in violation of the SAMs.

11 She lied to the government when she made her
12 affirmation under the SAMs to get access to Sheikh Rahman while
13 in prison, and, after being warned of the possible consequences
14 of her actions, she made another false affirmation to gain
15 access yet again and violated the affirmation yet again. She
16 understood the potential seriousness of her conduct at the time
17 and acknowledged that she was putting her whole career at risk.
18 LS-701T at 5.

19 Even in her statement to the Court, Ms. Stewart
20 candidly acknowledges that, "The acts in violation of my SAMs
21 affirmation speaking to a reporter and allowing prohibited
22 communications were committed intentionally. My only motive,
23 however, was to serve my client as a lawyer." Stewart
24 September 26, 2006 letter at 2.

25 The Court is plainly aware of the numerous arguments

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sentencing

1 made in the papers that the defendant's actions were simply
2 part of zealous advocacy. However, the defendant's actions
3 plainly went beyond any reasonable bounds of zealous advocacy
4 and were knowing violations of the law. The defendant is
5 entitled to great credit for a lifetime of dedicated service,
6 but that credit does not extend to the knowing violation of the
7 law.

8 Now is not the time to summarize all of the evidence
9 at trial. I refer to some of it now only to point out that the
10 offenses of conviction were serious, involved dishonesty and
11 breach of trust, and had potentially lethal consequences which
12 did not, however, actually transpire.

13 One of the purposes that the Court must take into
14 account is to reflect the seriousness of the offense, to
15 promote respect for the law and to provide just punishment for
16 the offense.

17 The Court must impose a sentence sufficient to
18 accomplish this purpose as well as the other purposes under
19 Section 3553(a)(2). The Court must also consider the nature
20 and circumstances of the offense as well as the history and
21 characteristics of the defendant. But, the seriousness of the
22 offense does not wipe out the three decades of service and the
23 other characteristics of the defendant and the particular
24 effects of the sentence on this defendant that the Court has
25 already discussed.

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1 Ultimately, the sentence must be a reasonable one that
2 considers all of the factors under Section 3553(a) and is
3 sufficient but no greater than necessary to meet the purposes
4 under Section 3553(a)(2).

5 Taking all of the factors into account, the Court
6 determines that a sentence of 28 months' imprisonment is
7 sufficient but no greater than necessary to accomplish the
8 purposes of Section 3553(a)(2).

9 The sentence also does not result in unwarranted
10 sentencing disparities. The Court has fashioned a sentence
11 that responds to the individual characteristics and history of
12 the defendant as well as the detail of the offenses of
13 conviction.

14 The Court has already compared the sentence to the
15 proposed sentencings of the other defendants in this case and
16 has concluded that there is no unwarranted sentencing disparity
17 even among co-defendants because of the individual personal
18 characteristics and roles played by each of the defendants.

19 The sentence will be imposed as follows:

20 28 months on each of Counts One, Four, Five, Six and
21 Seven, to run concurrently.

22 I will impose supervised release of two years to
23 follow imprisonment on Counts One, Four, Five, Six and Seven to
24 run concurrently with the standard conditions of supervised
25 release in this district and those recommended by the probation

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sentencing

1 department.

2 I will not impose drug testing because the defendant
3 is a low-risk of substance abuse.

4 The Court will not impose a fine because the defendant
5 lacks the ability to pay a fine.

6 The Court will not impose an order of restitution
7 because there are no victims under 18 U.S.C. Section 3663.

8 The Court will impose a \$500 special assessment.

9 The Court would also allow voluntary surrender as
10 recommended by the probation department but the Court is also
11 inclined to order bail to be continued pending appeal if, as
12 the Court assumes, the defendant files a notice of appeal and
13 the defendant seeks bail pending appeal.

14 The Court will certainly prepare to listen to the
15 parties on this, but the Court has received Mr. Ruhnke's letter
16 on behalf of Mr. Yousry and has considered the arguments in
17 that letter; it has also considered the fact that Mr. Ruhnke
18 advises that the government opposes bail pending appeal. And,
19 in the various submissions for Ms. Stewart, Mr. Tigar's letter
20 refers to the fact that his letter is also a letter in support
21 of bail pending appeal.

22 So, I'm confident that this is an issue that has been
23 considered and if the parties wish to address it, I have
24 considered the arguments and I'm prepared to listen if there is
25 opposition.

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sentencing

1 Yes, Ms. Baker.

2 MS. BAKER: Your Honor, the government agrees with the
3 legal standards as set forth in Mr. Ruhnke's letter and we
4 would submit to the Court that the various requirements are not
5 met, in particular that there is not a substantial question of
6 law or fact likely to result in a reversal or an order for new
7 trial or a sentence not including any term of imprisonment and,
8 in addition, that the requisite exceptional circumstances are
9 not present here -- or, exceptional reasons -- I guess is the
10 precise wording of the statute.

11 I assume that the Court has already considered those
12 specific factors and disagrees. I would ask that the Court set
13 forth its particular findings on those issues so that the
14 government can consider whether any appropriate relief might be
15 sought.

16 THE COURT: Of course. I welcome review. Now, I'm
17 not -- I should certainly listen to Ms. Stewart's counsel who
18 may wish to add to what Mr. Ruhnke has already said on behalf
19 of Mr. Yousry but, as I say, I am --

20 MS. FINK: Judge, can I just be heard on your sentence
21 for a second?

22 THE COURT: Let me put it this way.

23 MS. FINK: Okay, I just want to ask you to put a
24 condition --

25 THE COURT: Let me put off, until I have finally

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1 announced and imposed the sentence, the issue of bail pending
2 appeal and listen to the parties on that. All right?

3 So, I have indicated to you what my proposed sentence
4 is. I have explained the reasons for the sentence. Before I
5 actually impose the sentence I will listen to defense counsel
6 for any statement that defense counsel wishes to make.

7 MS. FINK: Judge, I would ask you to order, as part of
8 the sentence, that follow-up medical tests be given so that we
9 can come back to you.

10 THE COURT: I believe that when I deal with the Bureau
11 of Prisons it is a recommendation, and I am perfectly prepared
12 to make that recommendation.

13 MS. FINK: Would you put it in the form of an order if
14 we submitted an order for you?

15 THE COURT: I believe that in terms of the conditions
16 of sentence to the Bureau of Prisons it's recommendations and I
17 will do that in the judgment.

18 MS. FINK: And of course, Judge, we would ask that
19 Ms. Stewart be incarcerated at the federal correctional
20 institution at Danbury which is the closest facility. There
21 are only a few women's prisons and Danbury is the closest
22 within I would say, 800 miles of the other ones, to New York
23 City.

24 THE COURT: All right. Before I -- anything else?

25 MS. FINK: Anything else?

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1 MR. DEMBER: No. Thank you, Judge.

2 THE COURT: Before I impose the sentence, Ms. Stewart,
3 I will recognize you for anything you wish to tell me in
4 connection with sentence, any statement you would like to make
5 on your own behalf, anything at all you would like to tell me.

6 DEFENDANT STEWART: Thank you, Judge.

7 THE COURT: Before I actually impose the sentence I
8 will recognize the government for anything the government
9 wishes to tell me.

10 MR. DEMBER: Your Honor, the government just objects
11 to a non-guideline sentence.

12 THE COURT: Okay.

13 Pursuant to the Sentencing Reform Act of 1984, it is
14 the judgment of this Court that the defendant, Lynne Stewart,
15 is hereby committed to the custody of the Bureau of Prisons to
16 be imprisoned for a term of 28 months on Counts One, Four,
17 Five, Six and Seven, to run concurrently.

18 I recommend incarceration at FCI Danbury, Connecticut
19 so that the defendant can be close to her family.

20 I recommend to the Bureau of Prisons that the
21 defendant receive medical testing and medical care for her
22 medical conditions.

23 Upon release from imprisonment, the defendant shall be
24 placed on supervised release for a term of two years on Counts
25 One, Four, Five, Six and Seven, to run concurrently.

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1 Within 72 hours of release from the custody of the
2 Bureau of Prisons, the defendant shall report, in person, to
3 the probation office in the district to which the defendant is
4 released. On supervised release, the defendant shall comply
5 with the standard conditions of supervised release in this
6 district.

7 The defendant shall not commit another, federal, state
8 or local crime.

9 The defendant shall not possess a firearm or
10 destructive device as defined in 18 U.S.C. Section 921.

11 The defendant shall refrain from any unlawful use or
12 possession of controlled substance.

13 The defendant shall cooperate in the collection of
14 DNA, as recommended by the probation department.

15 It is further ordered that the defendant shall pay to
16 the United States a special assessment of \$500, which shall be
17 due immediately.

18 I have already explained the reasons for sentence.
19 Does either counsel know of any legal reason why the sentence
20 should not be imposed as I have so stated it?

21 MR. DRATEL: No, your Honor.

22 MR. DEMBER: No, your Honor.

23 THE COURT: I order the sentence to be imposed as I
24 have so stated it for all the reasons that I have explained.

25 Ms. Stewart, you have the right to appeal. The notice

EXHIBIT C

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Name	Register #	Age-Race-Sex	Release Date <small>Actual or Projected</small>	Location
1. LYNNE IRENE STEWART	53504-054	73-White-F	08-27-2018	CARSWELL FMC

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EXHIBIT D



SUPREME COURT

OF THE UNITED STATES

No. 12-8891

Title: Lynne Stewart, Petitioner

v.

United States

Docketed: February 25, 2013

Linked with 12A588

Lower Ct: United States Court of Appeals for the Second Circuit

Case Nos.: (10-3185)

Decision Date: June 28, 2012

Rehearing: September 24, 2012

Denied:

~~~Date~~~ ~~~~~Proceedings and Orders~~~~~

Dec 7 2012 Application (12A588) to extend the time to file a petition for a writ of certiorari from December 23, 2012 to February 21, 2013, submitted to Justice Ginsburg.

Dec 11 2012 Application (12A588) granted by Justice Ginsburg extending the time to file until February 21, 2013.

Feb 21 2013 Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due March 27, 2013)

Mar 22 2013 Order extending time to file response to petition to and including April 26, 2013.

Apr 23 2013 Order further extending time to file response to petition to and including May 28, 2013.

May 28 2013 Brief of respondent United States in opposition filed.

Jun 13 2013 DISTRIBUTED for Conference of September 30, 2013.

~~~Name~~~ ~~~~~Address~~~~~ ~~~Phone~~~

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